

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

TRYG INSURANCE, et al,

Plaintiffs,

-vs-

CIVIL ACTION NUMBER:

3:15-cv-05343-MAS-TJB

C.H. ROBINSON WORLDWIDE, INC.
et al,

BENCH TRIAL

Defendants.

Clarkson S. Fisher United States Courthouse
402 East State Street
Trenton, New Jersey 08608
May 4, 2017

B E F O R E: HONORABLE MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

KENNEDY, LILLIS, SCHMIDT & ENGLISH, ESQS.
BY: JOHN LILLIS, ESQUIRE
On behalf of the Plaintiffs.

KENNETH A. OLSEN, ESQ.
On behalf of the Defendants.

BARRY N. GUTTERMAN & ASSOCIATES, P.C.
On behalf of the Defendants.

Certified as True and Correct as required by Title 28,
U.S.C., Section 753
/S/ Cathy J. Ford, CCR, CRR, RPR

I N D E XWITNESSPAGE

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1 THE DEPUTY COURT CLERK: All rise.

2 (Open court begins at 9:59 a.m.)

3 THE COURT: Please be seated. Good morning.

4 COUNSELS: Good morning, your Honor.

5 THE COURT: We are here and we are going to be
6 on the record in the matter of Tryg Insurance et al.
7 v. C.H. Robinson Worldwide et al., Docket Number
8 15-5343.

9 May I have appearances of counsel, please.

10 MR. LILLIS: Good morning, your Honor. John
11 Lillis for the Plaintiffs.

12 THE COURT: Good morning.

13 MR. GUTTERMAN: Good morning, your Honor.
14 Barry Gutterman on behalf of C.H. Robinson Worldwide.

15 MR. OLSEN: Good morning, your Honor. Kenneth
16 Olsen, local counsel for C.H. Robinson.

17 THE COURT: Good morning. And, sir, you're
18 not entering an appearance but I always like to know
19 who's sitting at the table.

20 MR. MCLOUGHLIN: Yes. Chris McLoughlin, C.H.
21 Robinson.

22 THE COURT: Wonderful. Thank you. And
23 welcome.

24 The underlying action arises from a breach of
25 contract claim asserted by Plaintiffs against

1 Defendants for damage to miniature chocolate liquor
2 bottles. The parties have stipulated to damages. The
3 parties dispute, however, whether Defendant is a
4 broker or a carrier under Carmack Amendment. This
5 one-day trial, therefore, will focus in and address
6 the crux of the issue of whether the Defendant is a
7 broker or carrier for purposes of liability under the
8 Carmack Amendment.

9 So with that, I'm inclined to just let you
10 know that in this kind of matter I relax the rules of
11 evidence. So, I mean, to the extent that you have
12 objections I'm fine with you making them, but you
13 certainly don't need make them just for the sake of
14 making them. And I'm going conduct this in an
15 informal matter, but we will still follow the normal
16 protocol. I take it you folks have already agreed
17 that you're doing to do opening statements. We'll
18 then let Plaintiffs put on its case. We'll let
19 Defendants cross-examine the witnesses as they see
20 fit. I understand there are only really two live
21 witnesses, correct? Then after Defendants put on its
22 case, we are not doing closing statements, correct?

23 MR. LILLIS: That's correct, your Honor. In
24 fact, I'm not sure we even need opening statements --

25 THE COURT: It's completely up to you.

1 MR. OLSEN: The trial briefs that we
2 submitted --

3 THE COURT: Were comprehensive and I thought
4 you folks did a good job. So I'm happy to just move
5 right in.

6 MR. OLSEN: Good.

7 THE COURT: I understand that we have an issue
8 with regard to the interpreter that we want to
9 clarify. Is there an issue or is there a stipulation
10 as to the qualifications?

11 MR. LILLIS: Here's what I'd like to do, your
12 Honor. We had an original interpreter arranged and we
13 got a call yesterday from the service that her mom or
14 her mother-in-law had passed away and so she canceled
15 on us because she's going to a funeral this afternoon.
16 So we scrambled around and we found someone last
17 evening, who is based in Philadelphia, who is outside.

18 So she has never testified before in open
19 court. We received her resume this morning. What I
20 would propose, your Honor, is we bring in the
21 interpreter. The witness -- my witness is outside. I
22 kept him outside. We bring in the interpreter and I
23 do a short voir dire about her and her qualifications,
24 then counsel if he want can cross. I would then offer
25 her as an interpreter in the Danish and English

1 languages and then the Court would make a decision as
2 to whether the Court is comfortable with her serving
3 in that role.

4 THE COURT: Let me hear from defense counsel.
5 Have you folks had an opportunity to review her resume
6 and curriculum vitae?

7 MR. GUTTERMAN: Yes, I did, your Honor. I
8 have no objections to it. I think it's a good idea
9 that she at least be questioned by Mr. Lillis for her
10 credentials.

11 THE COURT: Okay.

12 MR. OLSEN: Your Honor, one more. Just a
13 housekeeping function before Mr. Lillis starts his
14 voir dire.

15 We have for you, as the pretrial order talks
16 about, a deposition of Janet Hays that's being
17 submitted to your Honor since she's not here. She is
18 no longer employed by C.H. Robinson; is residing out
19 in Minnesota. The Plaintiff has green highlighted
20 Plaintiffs' portions of the deposition; Defendant has
21 yellow highlighted. And I have the original
22 deposition -- full deposition with the highlights of
23 both parties for your Honor.

24 THE COURT: Okay. So we're going to offer
25 this and mark it as an exhibit and go ahead and move

1 it in.

2 MR. OLSEN: I believe it's exhibit number --

3 MR. LILLIS: It's marked already -- it's
4 Exhibit G.

5 MR. OLSEN: It's Exhibit G on Plaintiff's list
6 of exhibits.

7 THE COURT: Is it a joint submission?

8 MR. LILLIS: Yes.

9 MR. GUTTERMAN: I would say so, yes, your
10 Honor.

11 THE COURT: All right.

12 MR. LILLIS: We had discussed it at the final
13 pretrial, your Honor, and counsel for both sides
14 agreed to mark it up accordingly. In fact, we did it
15 before the magistrate.

16 THE COURT: Okay.

17 MR. LILLIS: And so we gave them our
18 designations a week ago --

19 MR. OLSEN: Give this to you, your Honor.

20 THE COURT: Yes, if you can pass that up.

21 MR. OLSEN: Because it's now marked. At that
22 time we had in green and we had to do the yellow. So
23 now we have --

24 MR. LILLIS: That's Exhibit G.

25 MR. GUTTERMAN: This would be Exhibit G that

1 we'll hand to you, your Honor.

2 MR. OLSEN: Thank you, your Honor.

3 THE COURT: Thank you. Any other housekeeping
4 or preliminary matters before we bring in the
5 interpreter?

6 MR. LILLIS: I guess if we're housekeeping I
7 guess we'll keep going -- well, just one second. One
8 of the Defendants was served and in default and so
9 we're going to be looking for judgment against that
10 other co-defendant.

11 THE COURT: Okay. That's not necessary for --

12 MR. LILLIS: Not necessary for right now.

13 MR. OLSEN: Not necessary for this, your
14 Honor. The other Defendant, NRT, which is the motor
15 carrier, is out of business and that's all we know
16 about them. I don't know anything about their
17 insurance or anything about their insurance or
18 anything about. All I know --

19 MR. LILLIS: They were served.

20 MR. OLSEN: They were served, okay.

21 THE COURT: Fair enough.

22 MR. LILLIS: I'm going to bring in the
23 interpreter, your Honor.

24 THE COURT: All right. Let's go. Let's move
25 forward.

1 Come forward, Ms. Deleuran. I'll ask you to
2 please stand. And can you swear in the witness,
3 please.

4 METTE DELEURAN, SWORN.

5 THE DEPUTY COURT CLERK: Please state your
6 name for the record and spell your last name.

7 THE WITNESS: Mette Deleuran, D-E-L-E-R-U-A-N.

8 THE COURT: I ask that you pull the seat
9 forward and speak directly into the microphone because
10 the court reporter is taking down everything that's
11 said here. So just keep your voice up.

12 So just some preliminary information that
13 we're going to have to obtain and then we'll proceed.

14 Mr. Lillis.

15 MR. LILLIS: Thank you, your Honor.

16 DIRECT EXAMINATION BY MR. LILLIS:

17 Q. Good morning, Ms. Deleuran.

18 A. Good morning.

19 Q. I'm going to show you what we have premarked as
20 Plaintiffs' H and ask if you can identify that.

21 A. That's my resume.

22 Q. And could you please briefly provide the Court
23 with your educational background.

24 A. I have a law degree from a Danish university and
25 I have a JD from an American university.

1 Q. What American -- what university?

2 A. Rutgers University.

3 Q. When did you obtain your law degree from Rutgers
4 approximately?

5 A. 1997.

6 Q. And when did you obtain your law degree in
7 Denmark?

8 A. The same year.

9 Q. And where were you born?

10 A. I was born in Denmark.

11 Q. And how many years did you live in Denmark?

12 A. I lived in Denmark for approximately 25 years.

13 Q. Where do you live now?

14 A. I live in the United States.

15 Q. When did you first come to the United States to
16 live?

17 A. I came the first time in 1988.

18 Q. Okay. And how long were you here?

19 A. I was here for one year at the time.

20 Q. Okay. What happened then, the next time?

21 A. I came back in -- other than vacations I came
22 back to live again in 1995 and I've been here ever
23 since.

24 Q. And what is your relationship and knowledge with
25 the Danish language?

1 A. It's my first language.

2 Q. When you were growing up as a child, what
3 language was spoken in your home?

4 A. Danish.

5 Q. When you were in grade school or early school
6 years in Denmark what language was used in school?

7 A. Danish.

8 Q. Could you please explain to the Court what is
9 your relationship and experience with the English
10 language, ma'am.

11 A. I first learned English in grade school in
12 Denmark and it has been the language that I use on a
13 daily basis since I moved here permanently in 1995.

14 Q. Are you currently employed, ma'am?

15 A. Yes, I am.

16 Q. And by whom?

17 A. Chubb Insurance.

18 Q. Where is that located?

19 A. Philadelphia.

20 Q. And what is your job with Chubb?

21 A. I work on reinsurance claims.

22 Q. Does Chubb have any relationship with this
23 dispute?

24 A. No.

25 Q. Have you ever performed any interpreter or

1 translation services from the Danish and English
2 language and back and forth before today?

3 A. Yes.

4 Q. Could you please describe to the court what your
5 prior experience has been.

6 A. I was a contractor with a company that did over
7 the phone translations and interpretations and they
8 would call me whenever they needed someone with a
9 Danish/English language pair.

10 Q. Have you ever testified in open court before?

11 A. No.

12 Q. Have you ever done any interpretation in
13 depositions or other legal testimony?

14 A. No.

15 Q. Have you ever done any interpretation in, for
16 example, immigration proceedings?

17 A. No.

18 Q. Did I ask you to spend some time with the
19 witness this morning?

20 A. Yes.

21 Q. And did I ask you to talk socially with him?

22 A. Yes.

23 Q. Did you?

24 A. Yes.

25 Q. What was your experience -- how did you

1 experience the conversation with him this morning?

2 A. It was very -- it was just a casual conversation
3 mostly about our families.

4 Q. I understand that. But how did you -- did you
5 understand him? Did he understand you? Could you
6 please explain the quality of the communication and
7 understanding between you and the witness this morning
8 during this social visit.

9 A. It was a very -- there were no language issues
10 at all. I understand him perfectly.

11 Q. And what language were you speaking with the
12 witness this morning?

13 A. Danish only.

14 MR. LILLIS: Your Honor, I'd like to offer H
15 into evidence.

16 THE COURT: Mr. Gutterman.

17 MR. GUTTERMAN: Yes, your Honor. I just have
18 a few questions.

19 CROSS EXAMINATION BY MR. GUTTERMAN:

20 Q. You said that you had no conversation with
21 Mr. Bastholm with regard to anything other than in
22 Danish; is that correct?

23 A. Correct.

24 Q. Did he at all indicate to you in Danish that he
25 was able to speak English fluently and understand

1 English fluently? Did you have any discussion about
2 that?

3 A. No, he didn't say he spoke English fluently.

4 MR. GUTTERMAN: Thank you. No other
5 questions, your Honor.

6 THE COURT: Mr. Lillis.

7 MR. LILLIS: Your Honor, we would like to
8 offer the witness as an interpreter as of service to
9 the court and to the witness.

10 THE COURT: Just a few questions from the
11 Court.

12 Ms. Deleuran, were there any dialect or
13 idiomatic usage patterns of the person requiring
14 interpreting services that you noticed when you had
15 your conversation with him this morning?

16 THE WITNESS: No.

17 THE COURT: And you do understand that you are
18 to be -- and I understand you've not testified in
19 court before, that you're here to be a neutral party
20 who is here to facilitate communication and that you
21 should not offer advice or interject your opinion into
22 the proceedings, correct?

23 THE WITNESS: I understand that, your Honor.

24 THE COURT: With that, counsel, we're going to
25 grant and accept Ms. Deleuran as a Danish to English

1 interpreter.

2 MR. LILLIS: And English to Danish.

3 THE COURT: Well, it's going to be both.

4 MR. LILLIS: Both.

5 THE COURT: Danish to English and English to
6 Danish interpreting for the proceedings today.

7 MR. LILLIS: Thank you, your Honor.

8 THE WITNESS: Thank you, your Honor.

9 THE COURT: You may step down.

10 MR. LILLIS: I'm going to call the witness.

11 THE COURT: We're going to have to swear in
12 the interpreter and then also swear in the witness.

13 THE DEPUTY COURT CLERK: Please state your
14 name for the record and spell your last name.

15 THE WITNESS: Mette Deleuran, D-E-L-E-U-R-A-N.

16 THE COURT: And let's swear in the witness.

17 MICHAEL BASTHOLM, STATE'S DEFENDANT WITNESS, SWORN.

18 THE DEPUTY COURT CLERK: Please state your
19 name for the record and spell your last name.

20 THE WITNESS: Michael Bastholm,
21 B-A-S-T-H-O-L-M.

22 THE COURT: Mr. Bastholm, you can have a seat.
23 Ms. Deleuran we're going to invoke your interpretive
24 services. My first question is going to be to
25 Mr. Bastholm.

1 Do you understand the interpreter? Do you
2 have any problems in terms of understanding the
3 interpreter? I understand you had an opportunity --
4 and you can feel free to translate -- this morning.
5 Do you have any problems understanding the
6 interpreter?

7 THE WITNESS: No.

8 THE COURT: And are you able to communicate
9 effectively with the interpreter?

10 THE WITNESS: Yes.

11 THE COURT: Do you wish to proceed with the
12 services of an interpreter and not rely on your own
13 understanding of English?

14 THE WITNESS: Yes.

15 THE COURT: Okay. Just so we're clear, all
16 your responses have to go through the interpreter, and
17 the interpreter will provide the English response for
18 the record. Okay? So you can't answer in English at
19 all.

20 THE WITNESS: Yes.

21 MR. LILLIS: Your Honor, perhaps the Court may
22 want to instruct the interpreter that she needs to
23 translate verbatim.

24 THE COURT: Counsel, I'm not giving that
25 instruction. I mean, sometimes English -- languages

1 don't translate verbatim, which is why we have an
2 interpreter.

3 MR. LILLIS: You're right, your Honor. Thank
4 you.

5 DIRECT EXAMINATION BY MR. LILLIS:

6 Q. Mr. Bastholm, what is your mother tongue?

7 A. It's Danish.

8 Q. And where do you live, sir?

9 A. I live in Denmark.

10 Q. And are you employed?

11 A. Yes.

12 Q. By whom?

13 A. Toms Confectionery Group.

14 Q. And what is the business of Toms?

15 A. Chocolate producer.

16 Q. And what is your position with Toms?

17 A. Shipping manager.

18 Q. And what are your duties as shipping manager?

19 A. I receive orders and I plan shipping.

20 Q. Do you have any particular geographical
21 jurisdiction as part of your job?

22 A. No.

23 Q. What is the jurisdiction?

24 A. Global.

25 Q. Does Toms provide and distribute its products

1 worldwide?

2 A. Yes.

3 Q. Does Toms distribute its products in the United
4 States?

5 A. Yes.

6 Q. How long have you been working as the shipping
7 manager at Toms?

8 A. In all, five years but separated in two terms.

9 Q. Did you have a position before you became
10 shipping manager at Toms?

11 A. Yes. Shipping assistant and shipping senior
12 planner.

13 Q. So how long have you been in the shipping
14 department at Toms?

15 A. 11 years.

16 Q. Before you were in the shipping department at
17 Toms, were you working at Toms?

18 A. No.

19 Q. Where were you working before Toms?

20 A. The name of the company?

21 Q. Well, what type of job?

22 A. Shipping work.

23 Q. How long in total have you been doing shipping
24 work as part of your job?

25 A. 23 years.

1 Q. Now, are you familiar with a company called C.H.
2 Robinson?

3 A. Yes.

4 Q. How did you come to be familiar with C.H.
5 Robinson?

6 A. From a colleague and from her emails.

7 Q. And what did you learn from the former colleague
8 and emails?

9 A. That we made use of the services of C.H.
10 Robinson to transport goods from storage facilitates
11 to Costco.

12 Q. What is the relationship of Costco to Toms?

13 A. Costco buys chocolate products from Toms.

14 Q. Are you familiar with a company called Assured,
15 A-S-S-U-R-E-D, Packaging Inc.?

16 A. Yes.

17 Q. Who are they?

18 A. It was the company responsible for packing
19 chocolate products.

20 Q. And where were they located?

21 A. Pennsylvania.

22 Q. And what was the relationship between Assured
23 Packaging and Toms?

24 A. Toms has employed Assured Packaging to package
25 chocolate products.

1 Q. Did Assured provide any other products other
2 than packaging?

3 A. Yes. They stored goods until they were ready
4 for distribution and helped prepare the bill of
5 lading.

6 Q. Do you know a company called Coregistics,
7 C-O-R-E-G-I-S-T-I-C-S?

8 A. Yes. Coregistics.

9 Q. Who are they?

10 A. It's a company that packages chocolates on
11 behalf of Toms.

12 Q. So it was doing similar functions to the Assured
13 Packaging?

14 A. Yes, same services.

15 MR. LILLIS: Now, your Honor, I have placed in
16 front of the witness a binder that contains Plaintiff
17 trial exhibits A for apple through F for frank. I
18 have removed Exhibit G, which is the deposition of
19 Janet Hays, and I informed counsel of this before we
20 started the direct examination. All of these are in
21 evidence, your Honor.

22 THE COURT: Mr. Gutterman.

23 MR. GUTTERMAN: Yes. I have no objection to
24 that, your Honor.

25 THE COURT: So moved.

1 (Plaintiff's Exhibit A, B, C, D, E, and F in
2 evidence.)

3 Q. So, sir, you have that binder in front of you
4 with exhibits A through F, sir?

5 A. Yes.

6 Q. I'd like to turn you to Exhibit A, please.

7 A. Yes, looking.

8 Q. What is Exhibit A?

9 A. It's a bill of lading related to transportation
10 from Assured Packaging in Levittown, New Jersey, [sic]
11 to Coregistics in Cranbury, New Jersey.

12 Q. Do you know who prepared that bill of lading?

13 A. Yes, Mr. Suffern (phonetic), an employee of
14 Assured Packaging on behalf of Toms.

15 Q. And what shipment is this?

16 A. It was the shipment of bottles -- of chocolate
17 bottles with liquor.

18 Q. Did anything happen to the shipment unusual?

19 A. Yes, the truck that was transporting the goods
20 was a cooling truck and it broke down during
21 transportation.

22 Q. And did anything happen to the chocolate?

23 A. Yes, the chocolates were damaged from the heat.

24 Q. Now, is there any reference on Exhibit A to
25 carrier?

1 A. Yes, on the top left corner carrier is mentioned
2 as C.H. Robinson.

3 Q. Is there any other carrier mentioned on
4 Exhibit A?

5 A. Yes. Bottom right-hand corner is a carrier is
6 mentioned, NR Transport.

7 Q. Before this loss or problem with the chocolate,
8 did you know about NR Transport?

9 A. No.

10 Q. Now, there are signatures down at the bottom of
11 Exhibit A?

12 A. Yes.

13 Q. With dates on it. What do those signatures mean
14 to you?

15 A. The signature on the left is from the shipper
16 Assured Packaging.

17 Q. Okay. And the signature on the right?

18 A. The signature on the right is from NR Transport
19 and it's proof that they were given the goods.

20 Q. And what is this bill of lading Exhibit A?

21 A. It's the shipping contract with C.H. Robinson
22 pertaining to the transportation from Assured to
23 Coregistics.

24 Q. And what is Exhibit B, sir?

25 A. It's a packing list that details the products

1 which were included in the transport.

2 Q. Is there any relationship between the list of
3 cargo described on Exhibit A, the bill of lading, and
4 the description on the packing list Exhibit B?

5 A. The goods that are listed in the packing list
6 are a true copy of the ones that are listed in the
7 bill of lading.

8 Q. And who prepares the packing list, sir? Sorry,
9 withdrawn. Who prepared Exhibit B, the packing list?

10 A. Assured Packaging on behalf of Toms.

11 Q. Okay. If you can to Exhibit C, sir. What is
12 Exhibit C?

13 A. It's a contract between -- it's a transportation
14 contract from C.H. Robinson.

15 MR. LILLIS: I think we're having an
16 interpreter issue here on the word but --

17 THE COURT: Okay.

18 MR. LILLIS: I understand, your Honor.

19 Q. Go ahead.

20 A. A receipt. It's a receipt for the transport and
21 the oil from Assured to Coregistics.

22 THE COURT: Mr. Lillis.

23 MR. LILLIS:

24 Q. We're working with Exhibit C. What is the
25 purpose of Exhibit C?

1 A. It's a bill from C.H. Robinson to Toms for the
2 transportation agreement.

3 Q. And what is the purpose of the bill, Exhibit C?

4 A. Toms pays C.H. Robinson for the transportation
5 and the oil that was expended in -- during the course
6 of the transportation.

7 Q. Did Toms pay this bill?

8 A. Yes.

9 Q. And what are the various items of the bill?

10 A. Line haul. One line item is for the actual
11 transportation, the truck.

12 Q. And what is that called?

13 A. Line haul.

14 Q. L-I-N-E H-A-U-L, in English?

15 A. Yes.

16 Q. And what other items are there?

17 A. The second line item is the fuel surcharge, the
18 oil and the gas that was used in connection with the
19 transportation.

20 Q. And what is the measure for the fuel surcharge
21 item?

22 A. There is a price per mile.

23 Q. If we go down to the bottom of Exhibit C?

24 A. Yes.

25 Q. There's some small typed written language, and

1 Line 4 of that --

2 A. Yes.

3 Q. -- references "applicable bill of lading." Do
4 you see that?

5 A. Yes.

6 Q. In your view, what is the applicable bill of
7 lading for this damaged shipment?

8 A. That's Exhibit 1, the bill of lading.

9 Q. Exhibit A? You said 1.

10 A. Excuse me, Exhibit A.

11 Q. I'm going to ask you to turn to Exhibit D, sir.
12 D for Delta?

13 A. Yes.

14 Q. Before the court proceedings and litigation on
15 this damaged cargo did you ever see Exhibit D before?

16 A. No.

17 Q. Exhibit E, E for echo?

18 A. Yes.

19 Q. Before this litigation or before this Court
20 proceedings regarding this damaged cargo, did you ever
21 see Exhibit E?

22 A. No.

23 Q. Prior to this incident and this shipment, back
24 in 2013, did you ever visit the C.H. Robinson website?

25 A. Presumably yes, but I never studied it closely.

1 Q. So you visited it, but you didn't study it?

2 A. Yes.

3 Q. And Exhibit F for foxtrot?

4 A. Yes.

5 Q. Before this litigation and before these court
6 proceedings regarding this damaged chocolate, did you
7 ever see Exhibit F?

8 A. No.

9 Q. Now, moving back to generally exhibits A, B and
10 C, are they normal documents that you would see as
11 part of your job on a daily basis?

12 A. Yes.

13 Q. Looking at Exhibit A, the bill of lading, just
14 generally when would you first see the bill of lading,
15 just any bill of lading after a shipment is made?

16 A. On the actual day or on the day after.

17 Q. And who would send you that?

18 A. In this case it was Assured Packaging.

19 Q. And how would they send it to you?

20 A. Via email.

21 Q. And when you would receive it, would you study
22 the whole bill of lading, just generally?

23 A. I would skim it over and I'd check the date and
24 check the PO number. Normally it would be Costco's PO
25 number.

1 Q. What's the reason for checking the date and
2 checking the PO number?

3 A. So I can send the bill to Costco.

4 Q. And would Assured also send you the packing list
5 Exhibit B when they would email you the bill of
6 lading?

7 A. Yes.

8 Q. And who send you Exhibit C?

9 A. That's C.H. Robinson.

10 Q. And who did you deal with at C.H. Robinson, if
11 anyone?

12 A. Janet Hays.

13 Q. Did you deal with anyone else at C.H. Robinson
14 other than Janet Hays?

15 MR. GUTTERMAN: Objection as to the question.
16 It's not limited to the specific matter.

17 THE COURT: Do you want to rephrase, counsel.
18 The objection, is that limited to this matter?

19 MR. LILLIS: Your Honor, I wasn't intending to
20 limit it to it.

21 THE COURT: Counsel, I'm going -- overrule the
22 objection. I'm going to allow the question. I think
23 you can ask it generally.

24 MR. LILLIS: Maybe madame reporter could read
25 it back and maybe I could do a better one. Let's see

1 what she says.

2 (Whereupon the Reporter reads the requested
3 portion of the record.)

4 MR. LILLIS: I'm going to withdraw it and ask
5 a better question.

6 THE COURT: Okay.

7 Q. You had testified in the beginning of the
8 examination that you became aware of C.H. Robinson
9 through a colleague and some email, correct?

10 A. Yes, that's correct.

11 Q. Do you remember approximately what year that
12 was?

13 A. It would have been 2007 or 2008 when I took over
14 that job from a colleague.

15 Q. And from 2007 to 2008 up until this time of this
16 shipment in 2013, were you the representative of the
17 shipping department and Toms -- at Toms dealing with
18 C.H. Robinson?

19 A. Yes, I was the primary contact person.

20 Q. Okay. Now, during this five or six-year period
21 that we just described of 2007 or '8 through 2013, did
22 you have a contact person or persons at C.H. Robinson
23 that you dealt with?

24 A. At one point I had a male contact. I don't
25 remember his name. And subsequently it was Janet

1 Hays.

2 Q. Do you have a recollection today as you sit here
3 testifying in this court as to how many years before
4 2013 you dealt with Janet Hays?

5 A. Not exactly, about four to five years.

6 Q. Approximately?

7 A. Approximately.

8 Q. During that four to five-year approximate
9 period, did you deal with anyone else other than Janet
10 Hays?

11 A. Not that I recall.

12 Q. Do you recall what type of service in terms of
13 quality that Janet Hays and C.H. Robinson provided you
14 during that five-year period?

15 A. Yes, good and responsible service.

16 Q. And how -- if there were shipments to be made to
17 Costco, for example, how would the shipment happen
18 between you and Janet Hays?

19 A. The procedure was that -- with the agreement
20 with Janet Hays and C.H. Robinson was that they would
21 provide a list of POs to Costco which showed which
22 dates the goods were to be delivered.

23 Q. And that would be from whom to whom?

24 A. From our packing company to C.H. Robinson.

25 Q. Okay. Then what would happen?

1 A. Janet would reach out to the packer or the
2 packer would reach out to Janet and make arrangement
3 for a pick up at the packer.

4 Q. Now, before this particular damage case that
5 we're talking about now, did Toms have any damage
6 cases with C.H. Robinson?

7 A. Not in my time.

8 Q. During your time, did your customer Costco have
9 any problems with C.H. Robinson in terms of their
10 deliveries or performance or schedule or anything like
11 that?

12 A. No.

13 Q. Did Janet Hays ever tell you that C.H. Robinson
14 was acting only as a broker?

15 A. No, that was never discussed.

16 Q. Did Janet Hays ever send you an email or a
17 writing or a fax or a bill or anything that told you
18 that C.H. Robinson was acting as a broker only?

19 A. No, never.

20 Q. Do you recall submitting a claim to C.H.
21 Robinson for this damaged shipment of chocolates?

22 A. Yes, I recall.

23 Q. And do you recall at some time thereafter
24 receiving C.H. Robinson's response?

25 A. Yes.

1 Q. And what was their response, as best you can
2 recall it?

3 A. Yeah. Yes, I got two responses. The first was
4 that they had received my mail and the second one was
5 that they had 90 days to review the claim.

6 Q. And did there come a time when they had reviewed
7 the claim and advised you of their position?

8 A. No, not as I recall.

9 Q. Did they ever accept the claim?

10 A. No, not as I recall.

11 Q. Did C.H. Robinson pay you for the loss?

12 A. No.

13 Q. Did they ever tell you why they weren't paying
14 the loss?

15 A. No.

16 MR. LILLIS: I have nothing further on direct,
17 your Honor.

18 THE COURT: Mr. Gutterman, at this time I
19 invite you to cross-examine the witness.

20 MR. GUTTERMAN: Thank you, your Honor.

21 CROSS EXAMINATION BY MR. GUTTERMAN:

22 Q. Mr. Bastholm, my name is Barry Gutterman and I
23 represent the Defendant C.H. Robinson. I would like
24 to have you before you the list of exhibits that the
25 booklet that the Plaintiff has given you. It's called

1 Plaintiffs' bench book. And also another folder that
2 has Defendant C.H. Robinson's trial exhibit books.
3 I'd like you to have both of those books before you.

4 Do you have those books before you?

5 A. No.

6 Q. Pardon me?

7 A. No.

8 Q. Okay. You have neither book; is that correct?

9 MR. LILLIS: He has mine.

10 MR. GUTTERMAN: I'm handing the witness the
11 trial exhibits that were prepared by C.H. Robinson.

12 A. Yes, I have them.

13 Q. I'd like to state that many of the questions I
14 was about to ask you were covered in quite detail by
15 Mr. Lillis so the amount of questions I have for you
16 will be reduced considerably from what I originally
17 had planned. What I'd like to first ask you --

18 THE COURT: Mr. Gutterman, take smaller bites
19 so the interpreter can --

20 MR. GUTTERMAN: Fine. Excuse me.

21 THE WITNESS: I understand.

22 Q. You testified that Exhibit A was the bill of
23 lading that was prepared by Assured Packaging; is that
24 correct?

25 A. Yes.

1 Q. Did C.H. Robinson to the best of your knowledge
2 issue any other bill of lading for the shipment?

3 A. No, not that I'm aware.

4 Q. Now, at the bottom of the bill of lading you
5 testified that, on the right hand corner, it said NRT
6 Transport and there was a signature. Based upon that
7 testimony was that the carrier in your opinion that
8 actually transported the shipment at issue?

9 A. It's my understanding that NRT drove the goods
10 on behalf of C.H. Robinson.

11 Q. Thank you. Did you have any other type of
12 agreement with C.H. Robinson other than the bill of
13 lading which was marked as Exhibit A?

14 A. No, no signed agreement, no.

15 Q. Now, turning to -- I have two booklets here so
16 you have to bear with me. Turning to the bill of
17 lading which has been marked as Exhibit A, is there
18 any signature on that particular document by C.H.
19 Robinson at all?

20 A. Yes, NR Transport.

21 Q. I'm asking about now if there are any signature
22 by C.H. Robinson on the bill of lading?

23 A. No. Nothing from C.H. Robinson.

24 Q. Now, on the left side of the bill of lading at
25 the bottom, you had testified that Assured had been

1 the one who was the shipper; is that correct?

2 A. Yes, that's correct.

3 Q. I just want to be clear, there's also a
4 signature there that I cannot read. Do you know who
5 actually signed the bill of lading on behalf of
6 Assured?

7 A. I'm not exactly clear but I would assume it's
8 Adam Samuel, who is our contact person at Assured.

9 Q. Now, on that bill of lading it refers to Toms
10 Confectionary Group as "bill freight 2." Tell me what
11 that means.

12 A. It means that C.H. Robinson and Toms have
13 entered an agreement and that once the transport had
14 been completed, C.H. Robinson is to bill Toms.

15 Q. Do you have any evidence at all that C.H.
16 Robinson transported the goods at all in this
17 particular shipment?

18 A. No.

19 Q. Do you have any evidence that C.H. Robinson ever
20 loaded or unloaded the shipment itself, the cargo from
21 the shipment?

22 A. No, but I can see that in our transport which
23 handled the goods on behalf of C.H. Robinson has
24 signed the bill of lading for receipt of the goods.

25 Q. In other words, your statement is that C.H.

1 Robinson entered into this bill of lading with you but
2 isn't it correct that Assured Packaging is the one who
3 prepared the bill of lading?

4 MR. GUTTERMAN: Can you read it back.

5 (Whereupon the Reporter reads the requested
6 portion of the record.)

7 THE WITNESS: It's correct that Assured
8 Packaging prepared the bill of lading on behalf of
9 C.H. Robinson.

10 Q. Did you personally have any input for anything
11 that was placed on the bill of lading with regard to
12 the reference to the carrier?

13 A. No.

14 Q. Did you have any conversations with anyone at
15 Assured Packaging as to why C.H. Robinson was listed
16 in one spot on the particular bill of lading as the
17 carrier?

18 A. No.

19 Q. I'd like you to take a look at Defendants'
20 Exhibit Number 9 in the list of trial exhibits.

21 A. Yes.

22 Q. Okay. Have you seen this document before,
23 before today?

24 A. Yes.

25 Q. And when would that have been, approximately?

1 A. I don't remember.

2 Q. Would it have been a few years ago or would it
3 have been in more recent time before your deposition
4 was taken last year?

5 A. It was in connection with the deposition, as I
6 recall.

7 Q. Thank you. Do you know who prepared this
8 report?

9 A. I don't recall.

10 Q. Does it mention the name of the company that
11 actually did the survey?

12 A. Yes.

13 Q. And what is the name?

14 A. International Surveyors and Adjusters.

15 Q. I'll read the sentence: "We hereby certify
16 that, in accordance with the instruction of WK Webster
17 (Overseas) Ltd. received on July 22, 2013, that the
18 assigned marine surveyors immediately communicated
19 with the parties concerned, undertook a survey and
20 reported the following."

21 Tell me, WK Webster, who are they?

22 A. I don't know.

23 Q. Did you at all retain -- ask to have WK Webster
24 step in and order a survey?

25 A. I simply don't remember.

1 Q. I would like you to silently read Section 1.2
2 on Page 2 and the third and fifth paragraphs.

3 INTERPRETER: Which paragraphs, I'm sorry?

4 MR. GUTTERMAN: This is 1.2, transit details,
5 under Page 2.

6 Q. I'd like you to read that silently then I'll ask
7 you a few questions.

8 A. Transit details, is that the one?

9 Q. In particular, let me make it clear I really
10 want you look now at Paragraphs 3 and 5 under
11 sections 1.2, just read those paragraphs.

12 A. Yes.

13 Q. I will read it for the record. Paragraph 3
14 says, "we also understand Assured Packaging appointed
15 C.H.R. on behalf of Toms Confectionary Group to
16 arrange and coordinate the delivery of 2,430 out of
17 2,662 cartons from Levittown, Pennsylvania, to
18 Coregistics, located at 260 Prospect Plains Road in
19 Cranbury, New Jersey."

20 I'm asking if you agree with that -- those
21 sentences?

22 A. Yes, in that sentence, yes.

23 Q. And Paragraph 5 for the record says, "CHR
24 appointed National Refrigerated Trucking to physically
25 transport the shipment from Levittown to Cranbury."

1 Do you agree with that sentence?

2 A. Yes, I can see that based on the bill of lading.

3 Q. Now, I'd like you -- I know -- take a little bit
4 of time. You said you had reviewed this before. You
5 don't have necessarily read it if you recall
6 everything in it. I would like you to read the entire
7 report so I can ask you a question. Silently.

8 THE COURT: Mr. Lillis.

9 MR. LILLIS: Objection. I think he should
10 focus the witness on a particular paragraph and
11 section, as opposed to -- this is a five-page report.

12 MR. GUTTERMAN: I'll focus on the question.

13 Q. The question I will ask is in this particular
14 survey is there any reference at all to C.H. Robinson
15 being a carrier, which would require you to review the
16 entire document unless you know for a fact it was or
17 was not?

18 THE COURT: One second. Mr. Lillis.

19 MR. LILLIS: Your Honor, the document speaks
20 for itself. It's in evidence. And we don't need the
21 witness to read the document to say what the document
22 says.

23 MR. GUTTERMAN: I'd also like to know if he
24 agrees with the conclusion reached, if there was no
25 reference to C.H. Robinson being in there.

1 THE COURT: Counsel, I'm going to overrule the
2 objection. You can proceed. You can answer the
3 question.

4 Why don't you repeat the question that you
5 want him to answer. Mr. Gutterman --

6 MR. GUTTERMAN: Oh, you want me to repeat it?

7 THE COURT: Yes.

8 Q. Basically, I want to know if you have reviewed
9 this document and if you found anything in there that
10 indicates that C.H. Robinson was referred to as a
11 carrier, even though the documents speaks for itself.

12 A. In the few paragraphs that I read no, I don't
13 see that.

14 Q. Did C.H. Robinson ever tell you that it owned
15 any type of equipment that it could have transported
16 your cargo for you?

17 A. No, but at the same time they never told me that
18 they didn't.

19 MR. GUTTERMAN: I would like to strike that.
20 I didn't ask that question.

21 THE COURT: So noted, Counsel.

22 Q. Did C.H. Robinson ever tell you they took
23 physical or title possession or delivery of the cargo?

24 A. Can you repeat the question.

25 MR. GUTTERMAN: You want to repeat the

1 question, Ms. Reporter.

2 MR. LILLIS: It's kind of a multiple question,
3 your Honor.

4 THE COURT: Again, counsel, I'm asking all
5 parties based upon the interpreter's services to
6 ask -- take smaller bites at the questions. So why
7 don't we read back the question as it's been stated
8 right now.

9 (Whereupon the Reporter reads the requested
10 portion of the record.)

11 MR. LILLIS: Same objection. Multiple
12 question.

13 THE COURT: Counsel, do you want to break
14 those down or --

15 Q. Okay. Did C.H. Robinson ever tell you they took
16 physical possession of the -- of your goods in this
17 particular case?

18 A. No, that was never discussed.

19 Q. Did they ever tell you they took title to the
20 particular goods that were shipped in this particular
21 case?

22 A. No, but it was my understanding that since I
23 paid them they took over the responsibility of the
24 goods.

25 Q. So this is based upon your assumption; is that

1 correct?

2 A. No, I'd like to refer to the -- to the Exhibit C
3 which shows that I paid C.H. Robinson to transport the
4 goods.

5 Q. So that's the basis that you're concluding is
6 because you made payment to C.H. Robinson; is that
7 correct?

8 A. Yeah. Yes, plus I had entered an agreement with
9 C.H. Robinson for them to transport the goods from
10 point A to point B.

11 Q. And what agreement is that? What document are
12 we talking about?

13 A. Straight bill of lading.

14 Q. Okay. Now, it's been your testimony that C.H.
15 Robinson acted as a carrier in this particular case.
16 What's the basis for you stating or concluding this?

17 A. That -- that's based on the fact that I entered
18 the contract with C.H. Robinson to have the goods
19 transported from point A to point B.

20 Q. And that contract would be you're saying the
21 bill of lading; is that correct?

22 A. Yes.

23 Q. Do you have any other documentation that you've
24 ever seen that refers to C.H. Robinson as being the
25 carrier in this particular case other than your

1 statement that the name C.H. Robinson was listed in
2 one spot on the bill of lading?

3 A. Exhibit C shows that I'm paying C.H. Robinson
4 for transport of goods.

5 Q. Now, you testified earlier that you had looked
6 at the website but really didn't study it. When you
7 looked at it, what did you look for in the website for
8 C.H. Robinson?

9 A. I don't recall.

10 Q. When you looked at the website do you recall
11 ever seeing a statement that C.H. Robinson was a
12 carrier in that website?

13 A. No.

14 Q. From the years 2009 up until I think it's 2013
15 or maybe '14, or when you began working for Toms which
16 I believe was what, about 11 years ago; is that
17 correct?

18 A. 2006.

19 Q. 2006. Did you use other companies to make
20 arrangements for the transport of your goods other
21 than C.H. Robinson during the time that you worked for
22 Toms?

23 A. Yes.

24 Q. And what's the best estimate of the number of
25 other companies that you used to make arrangements for

1 the transport of your goods from Europe to the United
2 States?

3 A. Is that the period from 2009 to 2013?

4 Q. Yes.

5 A. Two.

6 Q. What were the names of those companies?

7 A. PR Shipping and DSV.

8 Q. And did you check to see if they had a website,
9 those two companies?

10 A. No.

11 Q. Why not?

12 A. I didn't need it. I know that they have a web
13 page but I didn't need it. I didn't check to make
14 sure -- I didn't need to check to make sure they had a
15 web page.

16 Q. Now, you previously testified that you looked at
17 the C.H. Robinson website. Is there a reason why you
18 didn't look at their website in great detail to
19 determine who you were dealing with or the type of
20 entity that you were dealing with with regard to the
21 arrangement of the transport of your goods?

22 A. No, there was no need for me to check their
23 website. I understood that C.H. Robinson provided
24 transportation services for us and I didn't need to
25 check if they engaged the use of other companies.

1 Q. When you say engaged in transportation services,
2 in what capacity were they engaging in transportation
3 services?

4 A. We've used C.H. Robinson to transport goods from
5 point A to Costco's point B address.

6 Q. Now, when you talk about transport, are we
7 talking about the physical transport or making
8 arrangements for others to make the transport?

9 A. It was my understanding that C.H. Robinson
10 arranged for the transportation.

11 Q. Thank you. I'd like you to take a look at the
12 exhibit list -- the trial exhibit list which would be
13 Exhibit Number 1, which is the complaint.

14 A. Yes.

15 Q. Go to Page 3 and I'll read the sentence.
16 Paragraph 14. "C.H. Robinson subcontracted the
17 physical carriage of the cargo to NRT."

18 Would you agree with that statement? Page 3,
19 Paragraph 14?

20 A. Yes.

21 Q. Next, I will read the sentence and ask you a
22 question. Go to Page 4, Paragraph 24.

23 A. Yes.

24 Q. It states, "as motor carrier of goods for hire,
25 C.H. Robinson was obligated by the Carmack Amendment

1 and the terms of the bill of lading to properly and
2 safely transport, handle, carry, keep, care for,
3 discharge, and deliver the cargo in the same good
4 order and condition as when received by it."

5 Do you have any proof, any documentation that
6 C.H. Robinson is actually a carrier?

7 A. No.

8 Q. Is it your position that C.H. Robinson was your
9 sole contact for shipments that they performed for
10 Toms? In other words, it is your position that C.H.
11 Robinson was your sole contact for shipments that they
12 performed for Toms?

13 A. Yes, C.H. Robinson was my only contact.

14 Q. Besides the fact that C.H. Robinson was listed
15 as a carrier on the bill of lading prepared by Assured
16 and the fact that C.H. Robinson was a sole contact for
17 Toms, is this the basis for you concluding that C.H.
18 Robinson was a carrier in this particular shipment?

19 INTERPRETER: I'm sorry. Could you repeat
20 that.

21 THE COURT: Let's read the question back.

22 MR. GUTTERMAN: Read the question back,
23 please.

24 (Whereupon the Reporter reads the requested
25 portion of the record.)

1 THE WITNESS: Yes, but generally I have used
2 C.H. Robinson as my transporter in cases where I have
3 entered a contract, a shipping contract with them.

4 Q. If C.H. Robinson was not listed on this
5 particular bill of lading prepared by Assured
6 Packaging as the carrier, would you still have made a
7 claim against C.H. Robinson for the damages at issue?

8 A. Yes, because that is who I entered the contract
9 with to have goods shipped from point A to point B.

10 Q. Okay. Is your company deemed to be a shipper in
11 the industry, generally?

12 A. Yeah, you can say that.

13 Q. Would you consider Toms to be a sophisticated or
14 knowledgeable shipper?

15 A. I don't know if I would use the word
16 "sophisticated," but educated.

17 Q. Educated meaning knowledgeable, very
18 knowledgeable?

19 A. Yes, knowledgeable.

20 MR. GUTTERMAN: I have no other questions.
21 Ken?

22 MR. OLSEN: May I just approach Mr. Gutterman,
23 your Honor?

24 THE COURT: Sure.

25 BY MR. OLSEN:

1 Q. Good morning, sir. My name is Kenneth Olsen and
2 I'm local counsel for C.H. Robinson in this matter.

3 THE COURT: One second. Mr. Lillis.

4 MR. LILLIS: We normally don't have two
5 counsels representing the same client examining a
6 witness. I don't mind if counsel takes a few minutes'
7 break.

8 MR. GUTTERMAN: Do you have one question?

9 MR. OLSEN: I have one question. I can
10 certainly --

11 THE COURT: I'm going to allow one question.
12 I think Mr. Lillis is correct, but I am going to allow
13 one question.

14 MR. OLSEN: That's fine, your Honor. If it's
15 out of protocol I'll be happy to have Mr. Gutterman
16 ask it.

17 THE COURT: You're at the mike, counsel.

18 MR. OLSEN: Thank you, your Honor.

19 Q. Sir, in response to the last few questions from
20 Mr. Gutterman you kept on mentioning your agreement
21 with -- or agreements and contracts with C.H.

22 Robinson. Are you referring to Exhibit A, the bill of
23 lading for this particular shipment as your agreement?

24 A. Yes.

25 Q. Do you -- does Toms, to your knowledge, have any

1 other contracts or agreements with C.H. Robinson for
2 this shipment that we're talking about today?

3 A. Not that I'm aware of, no.

4 MR. OLSEN: Thank you, sir. Thank you, your
5 Honor.

6 THE COURT: Anything on redirect, Mr. Lillis?

7 MR. LILLIS: No redirect.

8 THE COURT: At this time, you're excused. You
9 can step down. Thank you for your testimony.

10 Counsel, it's about 11:40. We're going to
11 take a short restroom break. Just for housekeeping,
12 where are we proceeding after that?

13 MR. GUTTERMAN: Okay. I will put on my sole
14 witness Chris McLoughlin and we will have redirect.
15 That's it.

16 THE COURT: Okay. Let's take a 10-minute
17 break.

18 THE DEPUTY COURT CLERK: All rise.

19 (Recess at 11:41 a.m.)

20 THE DEPUTY COURT CLERK: All rise.

21 (Open court begins at 11:54 a.m.)

22 THE COURT: Please be seated. Mr. Lillis.

23 MR. LILLIS: Your Honor, we have no more live
24 witnesses. We can formally at some point put in the
25 exhibits and also Janet Hays's transcript which you've

1 already received, and if we're going to do a post
2 trial findings of fact, but basically in terms of the
3 evidence, we rest.

4 THE COURT: Okay. Thank you very much.
5 Mr. Gutterman.

6 MR. GUTTERMAN: Yes, your Honor. Chris.

7 Your Honor, for the record, my sole witness on
8 behalf of C.H. Robinson is Chris McLoughlin.

9 CHRISTOPHER MCLOUGHLIN, DEFENDANTS' WITNESS, SWORN.

10 THE DEPUTY COURT CLERK: Please state your
11 name for the record and spell your last name.

12 THE WITNESS: It's Christopher McLoughlin,
13 M-C-L-O-U-G-H-L-I-N.

14 THE COURT: You can be seated.

15 So for the record, Mr. McLoughlin, you've been
16 sworn. And I would ask that you pull the seat forward
17 and speak directly into the microphone. As you
18 notice, we have court reporter. She is taking down
19 every word that is spoken here so it's really
20 important that you keep your voice up and that she's
21 able to hear you clearly.

22 Please wait until the question is fully posed
23 before you begin to answer. She can't take down two
24 people speaking at the same time. Also, she can't
25 take down a nonverbal response such as a nod of the

1 head or shrug of the shoulder so make sure that you
2 give a verbal response.

3 Mr. Gutterman, your witness.

4 DIRECT EXAMINATION BY MR. GUTTERMAN:

5 Q. Yes. Chris, have you ever testified at trial
6 before?

7 A. No, I have not.

8 Q. Had you ever been -- has your deposition ever
9 been taken before?

10 A. Yes, I've been deposed before.

11 Q. And how many depositions would you say you've
12 actually had your deposition taken?

13 A. Approximately 10.

14 Q. And tell me what type -- out of the 10, what
15 type of cases were they?

16 A. The vast majority have been cargo claim-related,
17 probably 8 of 10.

18 Q. Would these have been cargo damaged claims that
19 would have been made by a shipper or someone else
20 against C.H. Robinson?

21 A. They are cargo claim related where a claimant
22 has involved C.H. Robinson.

23 Q. And would also a trucker have been involved in
24 any of those of eight depositions that you've taken
25 involving cargo?

1 A. Yes, there is always a trucker involved.

2 Q. And the other two types of depositions, what did
3 they involve?

4 A. The other two depositions were personal injury
5 cases.

6 Q. Okay. Are you taking any medication that would
7 affect your testimony today?

8 A. No, I am not.

9 Q. Tell me who are you presently employed by?

10 A. I'm currently employed by C.H. Robinson.

11 Q. And tell me where are they located?

12 A. C.H. Robinson's corporate headquarters are in
13 Eden Prairie, Minnesota.

14 Q. Is that where you're located?

15 A. Yes, it is.

16 Q. What is your current title?

17 A. My current title is risk manager.

18 Q. Okay. Now, going back to 2009 to 2013, what was
19 your title?

20 A. At that point in time I was a compliance and
21 claims manager.

22 Q. When did you take over as risk manager?

23 A. The risk manager change was approximately two
24 years ago.

25 Q. Okay. Now, tell me with regard to what are your

1 duties on a day-to-day basis?

2 A. My responsibilities at C.H. Robinson as a risk
3 manager is working to create programs, procedures,
4 reviewing protocols that limit the exposure of our
5 customers and our carriers and ourselves for the
6 various cargos that we will provide transportation
7 services for primarily in North America.

8 Q. And who do you report to?

9 A. I report to the vice president of truckload
10 operations, Kevin Abbott.

11 Q. Who reports to you, if anyone?

12 A. I do not have any direct reports today.

13 Q. How long have you been employed by C.H.
14 Robinson?

15 A. I've been employed by C.H. Robinson for
16 approximately 17 years.

17 Q. Prior to that 17-year period, were you employed
18 by someone else?

19 A. Yes, I was.

20 Q. And who was that?

21 A. I was employed by a company called American Back
22 Haulers out of Chicago, Illinois.

23 Q. What type of work did you do for them?

24 A. I was in loss prevention and cargo claims
25 administration.

1 Q. Now, prior to that particular position, had you
2 been employed by anyone else?

3 A. Not in a professional sense, no.

4 Q. Now, tell me anything about your educational
5 background.

6 A. So I have a Bachelor of Science degree from
7 Indiana University in Bloomington, Indiana, and I have
8 attained several certifications, one in hazardous
9 materials that I renew every three years. I've also
10 had various -- attended various seminars and training
11 in cargo claims, liability, cargo risk, cargo
12 security, things similar to that.

13 Q. And how many seminars would you estimate?

14 A. 15 to 20 over the --

15 Q. Would this be spread over what number of years?

16 A. Over the 17 years primarily my employment with
17 C.H. Robinson.

18 Q. Now, are you familiar with the lawsuit brought
19 by Tryg Insurance also a/s/o Toms Confectionary Group
20 versus C.H. Robinson and National Refrigerated
21 Trucking?

22 A. Yes, I am.

23 Q. Did you review the books and records of C.H.
24 Robinson kept in the ordinary course of business in
25 connection with the shipment?

1 A. Yes.

2 Q. Had you had the opportunity to review the
3 complaint in this particular matter?

4 A. Yes.

5 Q. I'd like you to take a look at Defendants' trial
6 book. It would be Exhibit Number 1.

7 A. I don't have the books in front of me.

8 THE COURT: You can approach, counsel.

9 Q. This is the trial exhibit book. I'm handing you
10 the Plaintiffs' bench book and you also have the trial
11 book for C.H. Robinson. Now, turn to the complaint
12 and I will read Paragraph 15 at Page 3. Okay?

13 A. Okay.

14 Q. "On 16 July, 2013, C.H. Robinson and NRT in
15 consideration of certain agreed freight charges picked
16 up, received and accepted the cargo then in good
17 ordering condition from API in the Levittown, issued
18 or accepted bill of lading Number 68422 (bill of
19 lading) which named both C.H. Robinson and NRT as
20 carriers to cover the subject shipment and agreed to
21 carry the cargo to Cranbury."

22 Based upon this statement, do you take any
23 objection to any of the language in that particular
24 paragraph?

25 A. Yes, I do.

1 Q. Tell me which language you take objection to.

2 A. C.H. Robinson did not agree to pick up, receive
3 or accept the cargo.

4 Q. Does C.H. Robinson have any equipment to pick up
5 or receive the cargo?

6 A. No, we do not.

7 Q. Did C.H. Robinson have any written contract with
8 Toms Confectionery for this particular shipment?

9 A. Not that I'm aware of.

10 Q. Next turn to Exhibit 2 of our trial book for
11 C.H. Robinson, which is entitled "The Answer." I'll
12 ask if you had an opportunity, when you find it, if
13 you had a chance to review this particular document?

14 A. Yes, I have.

15 Q. Now, referring to Page 5, and I will read the
16 sentence then ask you a question. "CHRW did not
17 handle or transport the subject shipment and it cannot
18 be held liable for any damage to the shipments caused
19 by improper loading, securement and/or transport by
20 other parties based upon the provisions by applicable
21 law."

22 Did C.H. Robinson at any time take any
23 possession of the cargo at issue?

24 A. No, we did not.

25 Q. Next go to Page 6 of the answer. Excuse me,

1 Page 5, I should say. Seventh affirmative defense,
2 Paragraph 37, "CHRW acted as a licensed interstate
3 property broker only for the shipment -- subject
4 shipment, and as such, has no liability to the
5 Plaintiff."

6 Did C.H. Robinson have a brokerage license at
7 the time of this shipment to the best of your
8 knowledge?

9 A. Yes, we did.

10 Q. Does C.H. Robinson still have a broker's license
11 for other shipments?

12 A. Yes, we still do have a property brokerage
13 license.

14 Q. Now turn to Exhibit 3 in C.H. Robinson's trial
15 book, which is a series of one, two, three, four,
16 five pages. Are these true and correct copies of
17 documents that are kept in C.H. Robinson in the
18 ordinary course of business?

19 A. Yes, they are. These are copies of our property
20 brokerage authority and the various name changes that
21 have occurred going back to 1981 on that operating
22 authority -- that property brokerage operating
23 authority.

24 Q. Okay. Now, does C.H. Robinson have a motor
25 carrier's license?

1 A. No, we do not.

2 Q. Did they ever have a motor carrier's license?

3 A. No.

4 Q. Go back to exhibit -- sorry to go out of
5 order -- Exhibit Number 1 and go to Page 6 of the
6 answer. Excuse me, Exhibit Number 2, Page 6. It
7 states at the top, "cross claims against NRT." Are
8 you familiar with the fact that a cross claim was
9 filed against NRT?

10 A. Yes, I am aware of that because NRT was the
11 motor carrier.

12 Q. Why was a cross claim filed, to the best of your
13 knowledge?

14 A. Because NRT was the motor carrier that hauled
15 the shipment and they are the party that's liable for
16 the loss.

17 Q. Did you review the bill of lading that was
18 marked as Exhibit A in Plaintiffs' bench book prior to
19 today?

20 A. Yes, I did.

21 Q. And on that particular document who was the one
22 who signed as carrier receiving the load?

23 A. NRT had an employee; their driver signed the
24 bill of lading.

25 Q. Now, there's a signature on there that's hard to

1 read. Who normally would sign, if you know, for NRT?
2 Would it be a driver? Would it be someone else? Who
3 would sign that document?

4 MR. LILLIS: Objection.

5 THE COURT: What's the objection?

6 MR. LILLIS: No foundation. He's talking what
7 NRT's practice would be.

8 THE COURT: Mr. Gutterman.

9 MR. GUTTERMAN: I'll rephrase it.

10 Q. At the bottom it says NRT and there's a
11 signature in there. Have you ever seen any documents
12 before with regard to where bills of lading have the
13 carrier's name on there and a space, and would it
14 normally be a driver for the motor carrier who would
15 sign?

16 MR. LILLIS: He hasn't laid any foundation,
17 your Honor, in terms of this witness's ability to
18 interpret a bill of lading and who is signing here. I
19 mean, we have an insurance man, we have a risk manager
20 from corporate office here, and so I think he's got to
21 qualify this person a little bit.

22 MR. GUTTERMAN: In response I've indicated
23 that had you reviewed the bill of lading prior to
24 today and is this in normal course of your routine as
25 risk manager to review bills of lading, so that's why

1 I think I've laid the foundation for him to answer the
2 question.

3 THE COURT: I'll ask you, counsel, little more
4 foundation about his background reading bills of
5 lading, how many he's reviewed.

6 Q. Have you involved yourself reading bills of
7 lading other than this particular case over the years
8 with regard to various cargo claims?

9 A. Yes, I have. Over the 17 years that I've been
10 involved with C.H. Robinson I've probably been
11 involved with thousands of cargo claims, reviewing all
12 the relative documents to the cargo claims, bills of
13 lading included.

14 Q. Who usually signs on behalf of the motor
15 carriers in those bills of lading? What type of
16 person would be signing?

17 A. It's customary that the driver is signing the
18 bill of lading.

19 Q. Thank you. Next take a look at Plaintiffs'
20 trial Exhibit F. Did you find that?

21 A. Yes, I did.

22 Q. This document at the top it states "C.H.
23 Robinson contract addendum and carrier load
24 confirmation," and it's got Number 13194339. And I
25 want to know if this is a true and correct copy that

1 is kept by CHR in the ordinary course of business?

2 A. Yes, it is.

3 Q. Was this particular document to the best of your
4 knowledge utilized in this particular case?

5 A. Yes, it was.

6 Q. Tell me what is this document and what is its
7 purpose?

8 A. This document is a rate confirmation. It's a
9 document that we use after the terms are negotiated
10 with the carrier on an individual shipment, we will
11 send them a rate confirmation that again restates the
12 agreement that we've made with the carrier, primarily
13 laying out where the carrier supposed pick up the
14 load, where the carrier is going to be delivering the
15 load, and then the agreed upon rate for transportation
16 service -- for transportation that the carrier is
17 going to provide.

18 Q. And on this particular document on the first
19 page who is listed as the carrier?

20 A. The carrier is National Refrigerated Trucking.

21 Q. And through this document itself is there a
22 reference to the fact that C.H. Robinson acts in the
23 capacity as a broker?

24 A. Yes, this document does clarify that we are
25 acting as a broker.

1 Q. Now, is this load confirmation given to Toms?

2 A. No, it is not.

3 Q. Why not?

4 A. This is the agreement between Robinson and the
5 motor carrier. It discusses privy information between
6 us and the motor carrier, primarily the rate that we
7 negotiate between ourselves.

8 Q. Now, in other cases that you've been involved
9 with in which there were cargo claims have you seen
10 load confirmations such as this?

11 A. Yes, I have.

12 Q. And in any of those situations did those load
13 confirmations, are they ever given to the shipper?

14 A. As a normal course of business the load
15 confirmation is not given to the customer. It is used
16 as a piece of evidence in cargo claims.

17 Q. Okay.

18 A. From time to time.

19 Q. Next, take a look at Exhibit D in Plaintiffs'
20 bench book. Prior to today, had you had an
21 opportunity to review this document that is an
22 agreement for motor contract carrier services?

23 A. Yes, I have.

24 Q. Is this a true and correct copy kept in the
25 ordinary course of business by CHR?

1 A. Yes, it is.

2 Q. Tell me in general terms what this contract is
3 utilized for.

4 A. This is our master contract agreement for
5 services. It's a contract between Robinson as
6 property broker and the motor carrier. It's a
7 standard course that all carriers that we do business
8 with sign a master contract agreement. It lays out
9 our expectations for the engagement between us and the
10 motor carrier.

11 Q. On this particular agreement who is listed as
12 the carrier?

13 A. The carrier in this agreement is NRT.

14 Q. And who is listed as the broker?

15 A. C.H. Robinson is the broker.

16 Q. Do you happen to know if NRT had a motor
17 carrier's license for this particular shipment?

18 A. Yes, NRT was a licensed motor carrier at the
19 time of the shipment.

20 Q. I'd like you to turn to Exhibit 7 of C.H.
21 Robinson's trial exhibits. Okay?

22 A. Okay.

23 Q. Is this a true and correct copy kept by C.H.
24 Robinson in the ordinary course of business?

25 A. Yes, it is.

1 Q. Prior to today, did you review this particular
2 document in preparation for your testimony?

3 A. Yes, I did.

4 Q. Do you happen to know if this particular license
5 was in effect at the time of the shipment?

6 A. Yes, it was in effect at the time of the
7 shipment.

8 Q. Do you happen to know if NRT provided C.H.
9 Robinson with any proof of insurance?

10 A. Yes, they did.

11 Q. Next, look to Exhibit 8 in C.H. Robinson's trial
12 exhibits. At the top it states, "certificate of
13 liability insurance." Is this a true and correct copy
14 of this document kept by CHR in the ordinary course of
15 business?

16 A. Yes, it is.

17 Q. Prior to today did you review this particular
18 document?

19 A. Yes, I did.

20 Q. Do you happen to know if it was in effect at the
21 time of the shipment?

22 A. Yes, it was in effect at the time of shipment.

23 Q. And what is the amount of the cargo insurance?

24 A. The carrier NRT on this insurance certificate
25 has \$100,000 limit on their cargo policy with a \$1,000

1 deductible and then a \$2,500 deductible for reefer
2 breakdown situations.

3 Q. Next I'd like to have you take a look at
4 Exhibit 9 in C.H. Robinson's trial exhibits. Do you
5 have that in front of you?

6 A. Yes, I do.

7 Q. Did you review this document prior to today?

8 A. Yes, I did.

9 Q. In reviewing the document do you see any
10 reference at all to C.H. Robinson as a carrier?

11 A. In this document C.H. Robinson is not referred
12 to as a carrier.

13 Q. Is there any reference in this document as
14 referring to C.H. Robinson as contributing to the
15 loss --

16 A. No.

17 Q. -- as alleged?

18 A. No, there is none.

19 Q. Does the document refer to C.H. Robinson
20 appointing NRT to physically transport the cargo?

21 A. Yes, it does.

22 Q. Did C.H. Robinson order this particular survey?

23 A. No, we did not.

24 Q. Do you have any idea who did?

25 A. I believe the underwriter for Toms requested

1 this survey be done.

2 Q. Now, in your position as risk manager, do you
3 review C.H. Robinson's website at all?

4 A. From time to time I do.

5 Q. When you say from time to time, what would be a
6 parameter of when you would review it?

7 A. I make a point of at least twice a year
8 reviewing the website.

9 Q. What's the reason that you do that?

10 A. Just to make sure that I am familiar with and
11 aware of the information that we're making public and
12 also validating the content of it is consistent with
13 our operations.

14 Q. Now, I'll refer you to Exhibit 10 in Defendants'
15 trial exhibit book. It's -- at the top it says C.H.
16 Robinson. It says, "corporate overview." And it says
17 three pages but actually only the first two pages of
18 it have anything on there, the rest just has a little
19 notation about dates. Have you seen this particular
20 document before?

21 A. Yes, I have.

22 Q. Is this a true and correct copy of a document
23 kept in the ordinary course of business by C.H.
24 Robinson?

25 A. Yes.

1 Q. Was this website to the best of your knowledge
2 in existence at the time of the shipment?

3 A. Yes, it was.

4 Q. Now, I'll read from the document and ask you a
5 question. It's under mission statement. It says,
6 "we," meaning C.H. Robinson, "are a global provider of
7 multimodal transportation services and logistics
8 solutions operating through a network of offices in
9 North America, Europe, Asia and South America." The
10 second sentence says, "we are a non-asset-based
11 transportation provider, meaning we do not own
12 transportation equipment that is used to transport our
13 customers' freight."

14 Okay. Based upon that statement, would that
15 be a true and accurate statement as far as you know?

16 A. Yes, it is.

17 Q. What is a non-asset provider mean to you?

18 A. A non-asset-based provider is a term that can be
19 used to refer to property brokers or third-party
20 logistics companies; entity that's primary course of
21 business is for arranging for transportation services
22 but not physically performing the transportation
23 services.

24 Q. Is there anything on these first two pages that
25 refers to C.H. Robinson as a carrier?

1 A. No, there is not.

2 Q. Now, there was testimony that Toms was provided
3 with an invoice which I believe is Exhibit C in
4 Plaintiffs' booklet, okay?

5 A. Okay.

6 Q. You have that in front of you?

7 A. Yes, I do.

8 Q. Have you reviewed this document before?

9 A. Yes, I have.

10 Q. Is this the invoice for the shipment at issue?

11 A. Yes, it is.

12 Q. Now, there's mention of certain line haul
13 charges and fuel charges. Would you explain what that
14 really means and who is the one who has to pay for it?

15 A. Sure. The line haul charge is going to be the
16 rate that is negotiated between our customer sales rep
17 and the customer that just lays out the general cost
18 that we are going to charge that customer to arrange
19 for that line haul.

20 So again, it's a predetermined pre-agreed upon
21 rate that will probably last for six months to a year
22 on a given lane. So in this circumstances or
23 situation there was probably a negotiation between our
24 rep and Toms that set a rate of \$650 to move a
25 refrigerated -- a full truckload refrigerated

1 shipment from Levittown to Cranbury, New Jersey. The
2 unique part about this is we will charge that customer
3 a flat rate regardless. We're kind of estimating
4 based on market conditions, our general knowledge of
5 what freight usually moves for and what it usually
6 costs to move things. We will set that rate, and then
7 when we get an order to do -- an order from a customer
8 saying a shipment is ready, something needs to move,
9 then we'll go out to the carrier marketplace and try
10 and find a motor carrier to move that shipment for a
11 cost less than the rate that we're charging the
12 customer.

13 We will also include a lot of times in our
14 ratings to our customers, because fuel is a very
15 significant cost factor in all transportation, we will
16 negotiate a variable rate. Again, the line haul rate
17 will stay consistent for a long period of time, then
18 we'll negotiate a fuel surcharge rate which is
19 variable based on some government indices at the time
20 the shipment actually moves. So you will have your
21 basic line haul plus a fuel surcharge, which is again
22 intended to be a realization that fuel can go up and
23 down at times. When fuel prices go high that
24 surcharge increases, and we can use that as part of
25 our negotiations on the carrier side of the equation.

1 Q. So in this case it would have been a negotiation
2 that you would have had with NRT; is that correct?

3 A. No. For this?

4 Q. Yes?

5 A. The negotiation with NRT is independent of this
6 rate.

7 Q. How much would have paid in this particular case
8 to NRT?

9 A. Hopefully something less than what was charged
10 to the --

11 Q. Is there a document that you have that would
12 reflect -- let's see if we can -- go to Exhibit
13 Number 5 of Defendants' trial book. Tell me if there
14 is anything in that document that reflects any type of
15 payment that would have been made to NRT.

16 A. Yes, the second page of this document will list
17 the price that we negotiated with NRT to move the
18 load. Now, because this negotiation for services is
19 done at a very short window to that actual time of
20 pick up, the carriers at that point are already
21 familiar with what their fuel cost is on that day,
22 where they are relative to fuel. So we usually don't
23 line item fuel surcharge out to motor carriers. It's
24 an all-inclusive rate to the carrier of \$475.

25 Q. Okay. With regard to the shipment at issue do

1 you know if C.H. Robinson selected NRT's driver?

2 A. No, we do not have any involvement in driver
3 selection.

4 Q. Is that a general proposition with regard to
5 other than this particular case where you do not get
6 involved with recommending drivers?

7 A. C.H. Robinson is not responsible for the
8 assignment of the driver. That's a carrier --

9 Q. Who is responsible?

10 A. That's a motor carrier responsibility.

11 Q. Now, this particular load confirmation, what is
12 it really used for? I mean -- I notice there was a
13 mention of driving instructions. What's the purpose
14 of that? Is C.H. Robinson the one who gives some
15 directions as to how a particular shipment -- route
16 they're supposed to take?

17 MR. LILLIS: Objection as to form.

18 THE COURT: Mr. Gutterman.

19 MR. GUTTERMAN:

20 Q. Is there anything in there that gives any
21 reference to directions for NRT in the load
22 confirmation, Exhibit 5? In this --

23 MR. LILLIS: Talking about driving directions?

24 MR. GUTTERMAN: Yes, driving directions. I'm
25 sorry.

1 MR. LILLIS: Okay.

2 A. No, there are no driving directions in this
3 document.

4 Q. Does C.H. Robinson ever get involved in loading
5 or unloading of cargo?

6 A. No.

7 Q. I'm not sure if I asked the question before. If
8 I did I'll ask it again. Did C.H. Robinson prepare a
9 bill of lading for this shipment?

10 A. No, we did not.

11 MR. GUTTERMAN: Just give me one minute. I
12 have no other questions.

13 THE COURT: Okay. Mr. Lillis, at this time
14 you're invited to cross-examine the witness.

15 MR. LILLIS: Thank you, your Honor.

16 CROSS EXAMINATION BY MR. LILLIS:

17 Q. Mr. McLoughlin, good morning -- good afternoon.
18 As part of your job in the insurance department, you
19 never had any contact with Toms, did you?

20 A. I did not have any contact with Toms.

21 Q. You never had any contact with Toms, correct?

22 A. Correct.

23 Q. And you never had any contact with Toms in terms
24 of booking loads, giving quotes, anything in the
25 commercial relationship going back and forth between

1 Toms and C.H. Robinson, correct?

2 A. Correct.

3 Q. In fact, Janet Hays was the representative of
4 C.H. Robinson who dealt with Toms, correct?

5 A. Yes.

6 Q. And Janet Hays wasn't able to be here today
7 because she's retired?

8 A. I'm not familiar with her current employment
9 status.

10 MR. GUTTERMAN: Your Honor, for the record,
11 upon information and belief she did retire some time
12 ago. That's why she's not present.

13 THE COURT: So noted.

14 Q. Do you know her location today?

15 A. No, I do not.

16 Q. Did you make any effort before coming here today
17 to find out what her location was?

18 A. No, I did not.

19 Q. Did you ask anyone else in C.H. Robinson to
20 determine her location?

21 A. No, I did not.

22 Q. Did you inquire of human resources or personnel
23 department to determine her last known address?

24 A. No.

25 Q. Did you make -- did you inquire of any of your

1 colleagues at C.H. Robinson to make any effort to
2 secure her presence here today in court?

3 A. No.

4 Q. Toms is not an investor in C.H. Robinson; is
5 that correct?

6 A. I don't know.

7 Q. Do you know if they are?

8 A. I do not know.

9 Q. Because in Exhibit 10 in the defense book, that
10 screen shot from the website, up at the top it says
11 "investors corporate overview"?

12 A. Yes.

13 Q. It doesn't say customers corporate overview,
14 does it?

15 A. No, it does not say that.

16 Q. Do you have any evidence that Toms is an
17 investor of C.H. Robinson?

18 A. No, I do not.

19 Q. Do you know who the investors of C.H. Robinson
20 are?

21 A. Personally, no.

22 Q. Well, personally or professionally?

23 A. Personally or professionally. There is public
24 information about who might own stock in C.H.
25 Robinson.

1 Q. Okay, but you don't know?

2 A. No, I do not.

3 Q. In Exhibit 10, there's no statement that says
4 C.H. Robinson acts as a broker only, correct?

5 A. Correct, there's no statement that specifically
6 says C.H. Robinson acts a broker only.

7 Q. So the answer is correct?

8 A. Yes.

9 Q. Is your department responsible for putting
10 out -- for preparing and transmitting invoices to
11 customers such as Exhibit C?

12 A. No, my department is not.

13 Q. Have you as part of your job at C.H. Robinson
14 ever been responsible for the production of invoicing
15 by C.H. Robinson to customers?

16 A. I've been involved in discussions about what our
17 invoices should read and how they should appear.

18 Q. In general?

19 A. In general, yes.

20 Q. Okay. Looking at Exhibit C, would you agree
21 with me that that is the invoice for the shipment in
22 question?

23 A. Yes.

24 Q. There's nothing on this invoice that says C.H.
25 Robinson is acting as broker only, correct?

1 A. Correct.

2 Q. And this invoice is indeed prepared by C.H.

3 Robinson, correct?

4 A. Yes.

5 Q. And Exhibit C, C.H. Robinson is charging Toms

6 money for moving this cargo from Levittown, PA, to

7 Cranbury, New Jersey, correct?

8 A. No, that's not correct.

9 Q. How is that not correct?

10 A. I'm sorry, is there a question?

11 Q. The question is, C.H. Robinson is charging Toms

12 for moving the cargo from Levittown to Cranbury?

13 A. No, we're charging Toms for arranging

14 transportation services.

15 Q. Does it say anything on this invoice that that's

16 what you're doing?

17 A. It doesn't say that on this invoice, no, but

18 that's what the invoice is for.

19 Q. Line haul means moving the cargo from point A to

20 point B, correct?

21 A. Not necessarily, no.

22 Q. What does line haul mean then?

23 A. Line haul is the cost of -- the cost that we're

24 charging the customer to arrange for those services to

25 move it -- to arrange for the services --

1 transportation services to get the cargo from the
2 shipping location to the destination.

3 Q. For the cargo to move from Levittown to Cranbury
4 the customer Toms paid C.H. Robinson \$663.50; is that
5 correct?

6 A. No, that's not -- the customer was charged
7 \$663.50 for Robinson to arrange for transportation
8 services to have the product moved from Levittown
9 Pennsylvania to Cranbury New Jersey.

10 Q. So you don't agree line haul means a movement
11 from A to B?

12 A. In this case, no.

13 Q. No, in general, line haul -- doesn't line haul
14 mean move from A to B?

15 A. Line haul can mean a lot of different things to
16 a lot of different people. In my opinion, line haul
17 means in this circumstance for our invoice, that's the
18 cost for us to arrange for transportation from one
19 point to another.

20 Q. And the fuel is for the 30 miles to go from
21 Levittown, PA, to Cranbury, correct?

22 A. It's a fuel surcharge expense, yes.

23 Q. Yeah, but it's for 30 miles?

24 A. Yes.

25 Q. And 30 miles is a difference between Levittown

1 and Cranbury, correct?

2 A. Correct.

3 Q. So that's actually the truck on the road those
4 30 miles, correct?

5 A. It's a -- it's a normalizing charge to account
6 for spikes or dips in fuel cost as they occur more
7 realtime in the market.

8 Q. And it's being charged on a per mile basis?

9 A. It's charged on a per mile basis, yes.

10 Q. It's 30 miles to go from Levittown, PA, to
11 Cranbury, correct?

12 A. Correct.

13 Q. Now, you issued an affidavit and you signed it
14 on April 11th of 2016 which was submitted as
15 Document 15-15 filed in this case on April 14th, 2016;
16 is that correct?

17 A. Yes.

18 Q. In Paragraph 9 you say at the time of the theft
19 to the goods there was in effect an agreement.

20 MR. LILLIS: May I show this to the witness,
21 your Honor?

22 THE COURT: Sure.

23 Q. Do you see that?

24 A. Which are we referring to again?

25 Q. Paragraph 9?

1 A. Paragraph 9, okay.

2 Q. You say at the time of the theft. Do you see
3 that?

4 A. Yes.

5 Q. Do we have a theft here in this case?

6 A. I believe that that was the initial situation,
7 that the cargo -- the cargo was believed to be stolen
8 and then it was subsequently recovered.

9 Q. Do you have any evidence of that?

10 A. No.

11 Q. Isn't it more correct that there was a
12 refrigeration breakdown and a mechanical breakdown
13 which led to a melting of the chocolate and ultimately
14 its damage?

15 A. It's my understanding that again from the
16 carrier -- from conversations that the carrier had
17 with Robinson personnel that the load was stolen from
18 the carrier and whoever stole it didn't maintain the
19 reefer. And the reefer shut down and the load was
20 subsequent -- and when the load was recovered it was
21 recovered with the reefer unit shut down.

22 Q. Have you seen any evidence to that effect? Is
23 there any exhibits here that say that?

24 A. Not that I'm aware of, no.

25 MR. LILLIS: Nothing further, your Honor.

1 THE COURT: Anything further on redirect,
2 Mr. Gutterman.

3 MR. GUTTERMAN: I just have one question.
4 Just one for clarification.

5 REDIRECT EXAMINATION BY MR. GUTTERMAN:

6 Q. Was the website that was shown in Defendants'
7 Exhibit D in effect at the time of the shipment?

8 A. Yes, it was.

9 MR. GUTTERMAN: Thank you. No other
10 questions.

11 THE COURT: Mr. Lillis.

12 MR. LILLIS: Nothing further, with this
13 witness.

14 THE COURT: At this time you can step down,
15 Mr. McLoughlin. Thank you for your testimony.
16 Mr. Gutterman.

17 MR. GUTTERMAN: Yes.

18 THE COURT: Anything further?

19 MR. GUTTERMAN: No, I have nothing further.
20 The only thing I wanted to inquire for the record is
21 what the subsequent procedure should be.

22 MR. LILLIS: Hold on. I still have some
23 rebuttal.

24 THE COURT: One second. Counsel, I asked
25 Mr. Gutterman if he was done.

1 MR. GUTTERMAN: No, I'm actually finished. So
2 I have nothing further with regard to recross.

3 THE COURT: Thank you. Mr. Lillis.

4 MR. LILLIS: I'd like to just put this witness
5 on rebuttal for a couple of questions.

6 THE COURT: This witness being --

7 MR. LILLIS: Michael -- Michael Bastholm, the
8 one we had before.

9 THE COURT: All right. Fine. Bring him up.
10 Remind you that you are under oath. You
11 recall the oath you've taken, correct?

12 THE WITNESS: Yes.

13 THE COURT: As does the interpreter?

14 INTERPRETER: Yes.

15 THE COURT: You can proceed, counsel.

16 CONT'D RECROSS EXAMINATION BY MR. LILLIS:

17 MR. LILLIS: Thank you, your Honor.

18 Q. Is Toms an investor in C.H. Robinson?

19 A. No.

20 Q. Has Toms had any other relationship with C.H.
21 Robinson other than that of customer?

22 A. No, not that I'm aware of.

23 MR. LILLIS: Nothing further, your Honor.

24 THE COURT: Anything, Mr. Gutterman?

25 MR. GUTTERMAN: No, your Honor.

1 THE COURT: Okay. You can step down. Thank
2 you very much. So with that testimony, is there
3 anything further? I take it at this time both parties
4 have rested?

5 MR. LILLIS: Yes, your Honor, we have rested;
6 both sides have rested. And we just have -- we just
7 have some housekeeping, which is what Mr. Gutterman
8 was starting to do before rebuttal. I don't know how
9 you want to handle it, your Honor, if we want to go
10 off the record or we want to have discussion with
11 counsel and the Court.

12 THE COURT: What are housekeeping items?

13 MR. LILLIS: Well, the items going to be first
14 of all we were able, as I think you can see, to put in
15 a very cooperative clean pretrial order, so in terms
16 of the exhibits, all the exhibits that were referenced
17 here today have been stipulated to be admissible.

18 THE COURT: Okay.

19 MR. LILLIS: So that's Number 1. Number 2, we
20 did submit this morning Janet Hays's marked transcript
21 which you now have. Green for the Plaintiff, yellow
22 for the Defendant.

23 Number 3, we did submit -- both counsel
24 submitted what we felt were fairly comprehensive trial
25 briefs laying out the law as we see it. Number 4, we

1 did have a conversation this morning, Mr. Gutterman
2 and myself, and we thought it might be helpful once
3 the transcript is available to do proposed findings of
4 fact to submit to the Court subject to a schedule that
5 the reporter and counsel and the Court can live with.

6 THE COURT: So to that point there, I'm going
7 to ask that you folks meet and confer and present to
8 the Court a proposed schedule. You can consult with
9 my court reporter in terms of the turnaround for the
10 transcript and whatever you folks deem is a reasonable
11 schedule just submit something in writing as to the
12 proposed schedule.

13 MR. LILLIS: That's fine.

14 MR. GUTTERMAN: So that would be a schedule
15 after we receive the transcripts.

16 THE COURT: Yes.

17 MR. LILLIS: That's fine, your Honor. I think
18 that's all we need is each side putting in proposed
19 findings.

20 THE COURT: Okay.

21 MR. LILLIS: If that's okay with the Court.

22 THE COURT: That's absolutely fine. That's
23 what I would do in the ordinary course. So with that,
24 I'm just going to ask that you confer with my
25 courtroom deputy and my law clerk just to make sure

1 that all of your items are in, that we have everything
2 that you want to have us here, and that you confer
3 with the court reporter to get the turnaround time for
4 the transcript and get something to the Court with
5 regard to the schedule.

6 And I think we're in good shape here. I do
7 want to congratulate folks on the professionalism
8 here. It makes life easier for everybody when the
9 attorneys can be professional with one another, can
10 communicate, can provide joint exhibits and joint
11 stipulations. You have no idea how much paper we go
12 through receiving just both sides' submissions and
13 then their arguments as to why the other side
14 shouldn't get the other stuff in. So I do appreciate
15 it when the parties can work together.

16 MR. LILLIS: Thank you, your Honor.

17 MR. GUTTERMAN: Thank you, your Honor.

18 MR. LILLIS: We appreciate all the
19 graciousness from the Court and everyone working here.

20 THE COURT: Thank you so much. Okay, counsel.
21 Good seeing all of you. Thank you very much.

22 MR. LILLIS: Thank you, your Honor.
23 Appreciate it.

24 MR. GUTTERMAN: Thank you, your Honor.

25 THE DEPUTY COURT CLERK: All rise.

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